

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

Timothy Jude Spires, Jr., # 248571,)	C/A NO. 9:09-1531-CMC-BM
)	
Petitioner,)	
)	ORDER
v.)	
)	
Gregory Knowlin, Warden,)	
)	
Respondent.)	
_____)	

This matter is before the court on the *pro se* application for writ of habeas corpus, filed in this court pursuant to 28 U.S.C. § 2254.

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(c), DSC, this matter was referred to United States Magistrate Judge Bristow Marchant for pre-trial proceedings and a Report and Recommendation (“Report”). On June 16, 2009, the Magistrate Judge issued a Report recommending that this petition be dismissed without issuing process to Respondent and without prejudice. The Magistrate Judge advised Petitioner of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. Petitioner filed objections to the Report on June 24, 2009.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28

U.S.C. § 636(b).

After reviewing the record of this matter, the applicable law, the Report and Recommendation of the Magistrate Judge, and Petitioner's objections, the court agrees with the conclusions of the Magistrate Judge. Accordingly, the court adopts and incorporates the Report and Recommendation by reference in this Order. Petitioner admits that he has not exhausted his state court remedies, but indicates that because he may now be barred from seeking direct appeal or collateral review of his state court conviction and because he contends that subject matter jurisdiction may be raised at any time, he is excused from attempting to exhaust his state court remedies. This contention is without merit.

This petition is dismissed without prejudice and without issuance and service of process upon Respondent.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
July 1, 2009

C:\Documents and Settings\Guest\Local Settings\Temp\notesFFF692\09-1531 Spires v. Knowlin adopt rr dismiss wo prej wo svc.wpd